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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/847,954	05/02/2001	Dwayne Bowman	249768005US3	6164
25096	7590	09/07/2004	EXAMINER	
PERKINS COIE LLP PATENT-SEA P.O. BOX 1247 SEATTLE, WA 98111-1247			ALAM, SHAHID AL	
			ART UNIT	PAPER NUMBER
			2172	13
DATE MAILED: 09/07/2004				

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	09/847,954	BOWMAN ET AL. <i>[Signature]</i>	
	<b>Examiner</b>	<b>Art Unit</b>	
	Shahid Al Alam	2172	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 25 August 2004.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-8 and 18-20 is/are pending in the application.
  - 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-8 and 18-20 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 24 September 2001 is/are: a) accepted or b) objected to by the Examiner.
 

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
    - a) All    b) Some \* c) None of:
      1. Certified copies of the priority documents have been received.
      2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
      3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____.   |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>9192002 &amp;04092003</u> . | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
|  | 6) <input type="checkbox"/> Other: _____.                                   |

## **DETAILED ACTION**

### ***Information Disclosure Statement***

1. The references cited in the information disclosure statement (IDS) submitted on 09192002 and 04092003 have been considered by the examiner.

### ***Claim Rejections - 35 USC § 101***

2. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claim 9 is rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

Claim 9 recites a memory containing a data structure.

A computer-readable medium that stores a data structure may define structural and functional interrelationships between the data structure. If the medium permits the data structure's functionality to be realized then the medium is statutory.

However, the invention as recited in the claim 9 is directed to a data structure stored in a memory. It is believed that the data structure is accessed by a data processor (or a system) to fulfill a particular objective which ranking search results. A data structure without a processor cannot rank search results.

See Guidelines Sections IV.B.1.(a).

***Response to Arguments***

3. Applicant's arguments filed 25 August 2004 with respect to election/restrictions of claim 9 have been fully considered but they are not persuasive. Claim 9 is not similar to claim 6 of Group I. Claim 9 teaches a computer memory containing a data structure while claim 6 is a method in a computing system. If the Applicant wishes to add claim 9 in the Group I, then claim 9 needs to be fixed so that this claim does not read a data structure stored in a memory and should not have any 35 U.S.C. 101 problem.

***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

Claims 1 – 8 and 18 – 20 are rejected under 35 U.S.C. 102(a) as being anticipated by U.S. Patent Number 5,640,553 issued to John Schultz ("Schultz").

With respect to claim 1, Schultz teaches a method in a computing system for ranking items in a search result, the method comprising:

receiving a query specifying one or more terms (column 13, lines 59 – 60);

generating a query result identifying a plurality of items satisfying the query; and for a plurality of items identified in the query result, combining ratings reflecting both (a) the frequencies with which users selected the item in query results produced for earlier queries specifying one or more terms of the query and (b) levels of effort required to

make such selections, such that the combination of ratings produces a ranking value for the item (column 6, lines 42 – 53; column 13, line 35 – column 14, line 27 and column 36, line 34 – column 37, lines 16 and 65).

As to claim 2, the ratings that are combined reflect the number of items that preceded the selected items in the query results from which they were selected (column 6, lines 42 – 53).

As to claim 3, the ratings that are combined reflect the set of navigation commands needed to reach the selected items in the query results from which they were selected (column 6, lines 42 – 53).

As to claim 4, the ratings that are combined reflect the extent to which the query results from which the items were selected were scrolled to reach the selected items (column 6, lines 42 – 53).

As to claim 5, the ratings that are combined reflect, in the query results from which the items were selected, the number of pages of each query result that preceded the page of each query result containing the selected item (column 6, lines 42 – 53).

Subject matter of claims 6 – 8 are rejected in the analysis above in claims 1 – 5 and these claims are rejected on that basis.

Subject matter of claims 18, 19 and 20 are rejected in the analysis above in claims 1 – 5 and these claims are rejected on that basis.

***Contact Information***

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Shahid Al Alam whose telephone number is (703) 305-2358. The examiner can normally be reached on Monday-Thursday 8:00 A.M. - 4:00 P.M..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John E Breene can be reached on (703) 305-9790. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Shahid Al Alam  
Primary Examiner  
Art Unit 2172

4 September 2004